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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

DONALD E. SULLINS, *Petitioner*

v.

CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS, FOURTH APPELLATE DISTRICT, STATE OF CALIFORNIA

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The petitioner respectfully prays that a writ of certiorari issue to review the judgment of the District Court of Appeals, Fourth Appellate District, State of California, on October 5, 1965.

OPINIONS BELOW

The opinion of the Superior Court of the State of California, In and For the County of San Diego (App. A, *infra*, pp. 1a-6a) is not reported. The opinion of the District Court of Appeals, Fourth Appellate District, State of California (App. B, *infra*, pp. 7a-12a) is not reported.

JURISDICTION

The judgment of the District Court of Appeals, Fourth Appellate District, State of California, was entered on October 5, 1965. The Supreme Court of California denied a timely-filed petition to review on December 1, 1965. On February 25, 1966, Mr. Justice Douglas extended the time in which to file a petition for a writ of certiorari to and including April 30, 1966.

QUESTIONS PRESENTED

1. Whether the trial court erred in failing to exclude tape-recordings of interrogations of petitioner that were made without counsel and without advice that petitioner had a right to counsel and need not answer questions unless he so desired and without warning that any statements made by petitioner could be used against him in any charges that might be filed.

2. Whether petitioner's conviction for the death of his daughter violates his right and duty to choose for his daughter the healing art that, in his mature judgment, was best for her, and whether that choice could be of a dissident healing art not believed in by the judge, the prosecutor, or the majority of citizens.

STATEMENT OF FACTS

The facts in this case are, for the purposes of this petition, not in dispute and may be easily summarized. Petitioner believes that drug therapy is more harmful to the health than it is healthful and is unwilling to submit himself or his family to the risks attendant with the use of drugs. He also believes that natural hygiene is, on balance, a far more successful art of healing. Having made this deliberate choice, peti-

tioner practiced the tenets of natural hygiene on himself and his family.

When in 1963 his seven-year old daughter, whom he believed had heart trouble, became ill, he applied the principles of natural hygiene in treating her: including the principle of fasting (i.e. withholding all food but feeding her solely on water and for a time on juice). During this period, his daughter suffered from fever, although after he began a 14½ day fast her fever never reached its previous heights. This fast was instituted and maintained under the constant telephonic direction of the man whom petitioner believed to be the nation's outstanding practitioner of the healing art of his choice. After the fever subsided and temperature returned to normal, and after the fast was broken, petitioner's daughter died.

The evidence was in conflict as to whether the fasting was a contributing factor to the death. Some doctors felt that it was; others did not. None felt that it was the sole or even principal cause of death. The trial court found, and the district court of appeals affirmed, that it was a contributing cause of death.

Petitioner was convicted of involuntary manslaughter. In the course of the investigation of this asserted crime, petitioner was interrogated by a deputy sheriff at the sheriff's office. This interrogation was conducted without counsel and without any advice that petitioner had a right to counsel. Nor was petitioner advised, as far as the record shows, that he had a right not to answer questions.

The interrogation was recorded on tape by a machine in an adjoining room. The microphone was hidden in the room where the interrogation took place. Peti-

tioner was not advised that this interrogation was being surreptitiously taped for possible future use. This practice was described at the trial as "routine" and a "set pattern" of the office (Tr. 362, 413).

On appeal, petitioner asserted that his conceded choice of healing art was not and could not be a crime. He also asserted that the trial court erred in admitting the statements made by him during the interrogation, when he had no counsel and was not advised that he had a right of counsel and need not answer.

The district court of appeals affirmed, holding that sufficient evidence sustained "the conclusion that the defendant willfully subjected his daughter to a fast, when she was seriously ill, to prove his belief that fasting was a cure for illness even though he knew that in doing so her illness might result in death and that the fast was a major contributing cause of the pneumonia which was the immediate cause of death." The appellate court concluded that upon this evidence petitioner could be held criminally negligent.

The court of appeals noted petitioner's argument that he acted upon the advice of a hygienic practitioner in imposing the fast upon his daughter, that he acted in good faith, and that therefore his action could not be culpable. The court concluded that "the trial court was not required to accept either his testimony in this regard or his conclusions based thereon."

Petitioner's contention that his statements to the deputy sheriff should have been excluded was rejected on the following grounds: "the statements were made during the investigatory rather than the accusatory stage of the proceedings; the defendant was not in custody at the time; and, under the circumstances of

this case, the process of investigation conducted by the deputy sheriff was not such as to lend itself to eliciting incriminating statements." The court noted that the petitioner objected to the surreptitious tape-recording of the interrogation, but concluded that this "constituted no more than the adaptation of modern recording methods to general investigation procedures." Finally, the court concluded that "the statements made by the defendant did not constitute confessions and . . . that it is not probable that a different result would have occurred if the statements had not been admitted."

The Supreme Court of California, with two judges dissenting, denied review.

REASONS FOR GRANTING THE WRIT

This case presents two issues warranting further review by this Court. One is in an area in which this Court has spoken much in the past generation: the right of the state to obtain a conviction using admissions made by the defendant in the privacy of police quarters without counsel and without being advised by counsel. The other is in an area in which this Court has not spoken directly, but which needs an examination in the light of fundamental constitutional principles: the right of a man to choose for himself and for his family that healing art which he deems best and most appropriate. This question is as of much importance to the freedom and dignity of man as is the right to counsel, to be secure from unauthorized searches and seizures, and to be free from deprivations of liberty accomplished outside the requirements of due process. For this question involves the right to life itself, the right to choose among the admittedly imperfect arts of healing without having to face a cirminal charge if that choice should prove to have been in vain.

1. *The Right to Counsel.* That there is a federal constitutional right to counsel in state criminal proceedings can no longer be open to question.[1] The argument must now focus on the extent of that right: at what stage of the proceeding does it arise; by what formulae, if any, must it be exercised; how, if at all, can it be waived. Although the full penumbra of answers to these questions can not yet be given with any definitiveness, various guideposts are now certain. It is clear that the circumstance of the probable truth or falsity of the statement made is an immaterial factor.[2] It is clear that, should the questioned citizen request counsel, counsel must be furnished before further statements may be taken.[3] And it is clear that the citizen need not have been indicted[4] nor even be in custody.[5] It is enough if at some critical point in the case he give to the state damaging statements when he neither had counsel nor had intelligently waived counsel. And it is clear that the waiver of this fundamental right to counsel must be clearly shown and will not be presumed.[6]

The invocation of the right to counsel cannot be made to depend upon the expression of any particular incantation. This was the necessary holding of this Court

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[1] Gideon v. Wainwright, 372 U.S. 335; Escobedo v. Illinois, 378 U.S. 478.

[2] Rogers v. Richmond, 365 U.S. 534, 543; Hamilton v. Alabama, 368 U.S. 52, 55.

[3] Escobedo v. Illinois, 378 U.S. 478.

[4] Ibid.

[5] Massiah v. United States, 377 U.S. 201.

[6] Escobedo v. Illinois, 378 U.S. 478, 490 n. 14; Johnson v. Zerbst, 304 U.S. 458, 464.

in *McLeod* v. *Ohio,* 381 U.S. 356, which followed *Escobedo.* The Supreme Court of Ohio distinguished *McLeod* from *Escobedo* on the grounds that the defendant in *Escobedo* was already represented by counsel and requested permission to consult him, neither of which fact existed in *McLeod.* In reversing for further consideration in light of *Massiah* v. *United States,* 377 U.S. 201, this Court necessarily held that a request for counsel is unnecessary to the right as is the existence of a client-attorney relationship.[7] Thus it is immaterial here that petitioner did not request counsel at the time of his first interrogation by the deputy sheriff.

The right to counsel, this Court held in *Hamilton* v. *Alabama,* 368 U.S. 52, must be afforded at every "critical stage of the proceeding . . . ."[8] In *Hamilton* this stage was held to exist at time of arraignment because of its significance in Alabama procedure. In *White* v. *Maryland,* 373 U.S. 59, a preliminary hearing at which a confession was received was likewise held to be a critical point, despite the absence of procedural significance accorded in Alabama law. Upon the decision in *Massiah,*[9] it was thought that indictment was the point at which the critical stage arrived. But this was laid to rest in *Escobedo,* where it was stated in no uncertain terms that to draw such a "borderline" is to

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[7] See to the same effect People v. Donovan (as pertains to the codefendant Mencher), 13 N.Y.2d 148, 193 N.E.2d 628, 243 N.Y.S.2d 841, particularly the dissenting opinion, 13 N.Y.2d at 151 n. 2, 193 N.E.2d at 629 n. 2, 243 N.Y.S.2d at 843 n. 2.

[8] The pivotal term "critical" was borrowed from the majority opinion of Mr. Justice Sutherland in Powell v. Alabama, 287 U.S. 45, 57.

[9] 377 U.S. 201.

exalt "form over substance."[10] Instead, the test was held to be whether the investigation "has begun to focus on a particular subject."[11] When it focuses upon one person, and that person is subjected to interrogation by the state, a critical stage of the proceedings has arrived and the right to counsel has attached. That actual custody is unnecessary is shown by *Massiah*, where the statements were made to a police-planted confederate while the accused was not in custody. And the fact that there has not been a formal arrest can not be determinative either, for that too would be to "exalt form over substance."[12] Rather when the state is focusing upon one person as a possible suspect, and that person is being interrogated by a representative of the state, particularly within the confines of a police station or sheriff's office, the proceeding is critical to the future life or liberty of that person. He may have the technical right to leave or not to answer. But, assuming he is aware of his rights to leave or remain silent, it would take either the hardened criminal or an extraordinarily brave man to exercise such rights, alone, in such surroundings, without counsel.

The right to counsel may of course be waived.[13] But, as this Court has made abundantly clear, waiver of such a fundamental right must be "an intentional relinquishment or abandonment of a known right or privilege . . . ."[14] And courts are to "indulge every reason-

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[10] 378 U.S. at 486.

[11] Ibid.

[12] Ibid.

[13] Escobedo v. Illinois, 378 U.S. 478, 490 n. 14.

[14] Johnson v. Zerbst, 304 U.S. 458, 464.

able presumption against waiver . . . ."[15] Just four years ago, this Court, with considerable care, made clear the standard:

> Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.[16]

Thus, "it is settled that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request."[17] In the language of the Second Circuit: "Under this familiar standard, waiver may not be implied by the bare failure to act . . . ."[18]

It is therefore clear that for there to be a waiver *the record must show* that there was knowledge of the right and that the right was consciously and understandingly rejected. Thus in the words of *Carnley* v. *Cochran,* 369 U.S. 506, 516, the record must show that "an accused was offered counsel," which was then "intelligently and understandingly rejected." And in the words of *Escobedo,* even where the questioned person has requested counsel, indicating that he is aware of his rights, it is a material factor that "the

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[15] Ibid.

[16] Carnley v. Cochran, 369 U.S. 506, 516. The test has been specifically held "applicable to asserted waivers of the right to counsel in state criminal proceedings." Id. at 515.

[17] Id. at 513. See also United States v. New Jersey, 351 F.2d 429, 437 (C.A. 3).

[18] United States v. LaValle, 330 F.2d 303, 310 (C.A. 2).

police have not effectively warned him of his absolute constitutional right to remain silent.'"[19]

This record lacks any evidence of an offer of counsel, an intelligent and understanding rejection of such offer, or of a warning that petitioner had an absolute constitutional right to remain silent,[20] but it contains the affirmative evidence that the interrogating officer had arranged for the surreptitious recording of petitioner's statements through a hidden microphone,[21] a procedure that the deputy sheriff characterized as a "pretty well set pattern,"[22] and the trial judge recognized was "routine."[23]

That petitioner, after the first lengthy interview, consulted counsel and was then advised to cooperate and in fact did cooperate cannot be material. For the cat was already out of the bag and as it has been well stated there is no way to put it back again[24]—be it even assumed that the cat was not surreptitiously tape recorded. Nor can it make any difference that petitioner, presumably on advice of counsel, assumed the stand at the trial. Again, counsel was faced with a fait accompli, with which he had to do his best. That there was advice of counsel intervening between the various statements has been held to be an immaterial factor.[25]

The California court in this case made much of its conclusion that petitioner, in its view, may not have

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[19] 378 U.S. at 490-91.

[20] See Tr. 362-63.

[21] Tr. 360-62, 411-13.

[22] Tr. 413.

[23] Tr. 362.

[24] United States v. Bayer, 331 U.S. 532, 540.

[25] Killough v. United States, 315 F.2d 241 (C.A.D.C.).

been prejudiced by the obtaining of the damaging statements without counsel. Yet, actual prejudice is not the hallmark of the constitutional right to counsel. This Court was faced with the very problem in *Hamilton* v. *Alabama,* 368 U.S. 52, 55, where the Alabama court, like the California court here, rejected a right-to-counsel argument on the ground that the defendant had not been "disadvantaged in any way by the absence of counsel . . . ."[26] This Court, in rejecting that rationale, made clear that, where constitutional right to counsel is not met, "we do not stop to determine whether prejudice resulted."[27]

The California court also made much that when without counsel petitioner did not in haec verba confess to a crime. He did not incant the magic formula: I am guilty. But to require such incantation for the exercise of the constitutional right to counsel again exalts form over substance. It did not require this Court to recognize that "the admissions that were elicited by the prosecuting attorney may well have been as damaging as a plea of guilty. . . . If Walton had been represented by counsel . . . his attorney would certainly have warned him that he was not compelled to answer any questions . . . ."[28]

Thus this case presents in stark relief a rejection of the principles evolved by this Court. Petitioner was called to the state's officer and, along with that officer in a private, interior office, without counsel, he was inter-

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[26] Hamilton v. State, 271 Ala. 88, 93, 122 So.2d 602, 607.

[27] 368 U.S. at 55; White v. Maryland, 373 U.S. 59, 60.

[28] Walton v. State, 366 S.W.2d 707, 709 (Ark.), upon remand for reconsideration in light of Hamilton v. Alabama. See 371 U.S. 28. See Massiah v. United States, 377 U.S. 201; Ashcraft v. Tennessee, 327 U.S. 274.

rogated concerning an event as to which he could be the only accused. The investigation had clearly focused upon him. That charges had not yet been filed or even that the investigating officer was unaware that they ever would be filed cannot be a material factor. It is petitioner's right to counsel while he stood alone against the state that is at issue. The denial of this right, and the questions raised by that denial, warrant further review by this Court.[29]

The State of California urged in the courts below that in this case there are differentiating factors: petitioner had not been formally placed under arrest; the interrogating officer did not know whether charges would be brought; there was merely an investigation being performed. Should these be limitations upon the right to counsel, they should be drawn only after plenary review by this Court. The right to counsel is

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[29] Further development of the significance of these questions may be found in Note, The Coming of Massiah: A Demand for Absolute Right to Counsel, 52 Geo. L.J. 825 (1964); Kamisar, "Equal Justice in Criminal Procedure," Criminal Justice in Our Time, Howard ed. (1965); Griswold, The Long View, 51 A.B.A.J. 1017 (1965); Vorenberg, Police Detention and Interrogation of Uncounselled Suspects: The Supreme Court and the States, 44 B.U.L. Rev. 423 (1964); Remington, The Role of the Police in a Democratic Society, 56 J. Crim. L. C. & P. S. 361, 364 (1965); Enker and Elsen, Counsel for the Suspect: Massiah v. United States and Escobedo v. Illinois, 49 Minn. L. Rev. 47, 85 et seq. (1964); Dowling, Escobedo and Beyond: The Need for a Fourteenth Amendment Code of Criminal Procedure, 56 J. Crim. L. C. & P. S. 143, 157 (1965); Note, An Historical Argument for the Right to Counsel During Police Interrogation, 73 Yale L.J. 1000 (1964); Note, The Right to Counsel During Police Interrogation: The Aftermath of Escobedo, 53 Calif. L. Rev. 337 (1965); Note, Interrogation of Criminal Suspects, 59 Northwestern U. L. Rev. 660 (1964); Note, The Curious Confusion Surrounding Escobedo v. Illinois, 32 U. Chi. L. Rev. 560, 561 (1965); Sutherland, Crime and Confession, 79 Harv. L. Rev. 21 (1965).

nationwide as well as fundamental. The implications of delimiting that right upon formalistic distinctions warrants review in this Tribunal.

2. *The Right To Choose a Healing Art.* This case concerns a father raising his daughter and exercising his best judgment in doing so. In the exercise of this judgment he chose to follow one of the several healing arts available in this country. Unfortunately, his child died. Because this healing art is a dissident one, not followed by the majority of Americans, he is held accountable. This raises fundamental questions as to the rights of a citizen and of a parent to minister unto himself and to his children as he believes best.

It would be well to note at the outset what is not involved in this case. This case does not involve the right of one to hold himself out as a practitioner. It does not concern the right of the state to require a license or an examination of those who so hold themselves out. Nor does it involve the power of the state to prohibit any except licensed practitioners from offering their talents to the public. Finally, it does not involve the right, if there be such right, of the state to step in as parens patriae, replacing the parent in the care of the child and the exercise of judgment concerning that care.

This case also does not involve a parent who has abandoned his child or in callous disregard of that child has mistreated or neglected her.[30] Rather, this is

[30] Compare People v. Chavez, 77 Cal. App. 2d 621, 176 P.2d 92 (child stranded to die by mother); People v. Villalobos, 208 Cal. App. 2d 321, 25 Cal. Reptr. 111 (child scalded to death by mother); People v. Montecino, 66 Cal. App. 2d 85, 162 P.2d 5 (elderly woman confined to bed abandoned without care by one who had undertaken to care for her).

a case of a father who does care,[31] who cared enough to furnish that child with the type of treatment that in his judgment was best.

It should be recognized that the healing arts have not yet reached a point of perfection. People die every day;[32] many without reaching a ripe old age.[33] People die when they are under the care of the most well-recognized practitioners in the land.[34] People die in hospitals and on operating tables. Indeed, doctors themselves are mortal. And those who are alive cannot claim perfect health even when they are under the care of the best that any healing art can offer.[35]

It must also be recognized that sometimes people who are treated by the majority-recognized healing arts die or become maimed because of that treatment. It needs no citation to note that people die on operating tables because of surgical accidents or because the body sometimes cannot take the knife. It needs but a reading of

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[31] Tr. 39, 43, 153, 196, 201, 203-41, 650, 1182, 1193.

[32] In 1962, for example, there were 1,756,720 registered deaths in the United States. See Report of Public Health Service in 1963 Annual Report of Department of Health, Education, and Welfare, p. 125.

[33] E.g., in 1962 about 1 infant in 40 died within a year of birth in the United States. Id. at 126.

[34] See, e.g., Tr. 70 (testimony of Robert R. Eggen, M.D., Chief Pathologist and Coroner of San Diego County, California); Tr. 576 (testimony of Homar R. Irwin, M.D., that the type of pneumonia which Rhea Sullins had at her death "is fatal in ten to twenty per cent of cases if every known treatment available is given.").

[35] The United States Public Health Service reports that "74 million Americans have one or more chronic conditions or impairments. This represents 42 percent of the Nation's civilian non-institutional population." 1963 Annual Reports of the Department of Health, Education and Welfare, p. 124. During 1962 the average American experienced "16.3 days of restricted activity" because of disability, chronic and acute illnesses. "Of this total, 6.4 days were spent in bed." Id. at 124-25.

the morning newspaper to realize that drugs can often kill or permanently injure. As the Medical Director of the Food and Drug Administration has well stated: "There isn't any drug without hazard."[36] Indeed, says the United States Public Health Service, unwanted side effects of drugs amount to one of the nation's leading diseases. Some 1.3 million Americans each year, it is said, are significantly sickened by adverse reactions to medicine.[37] And books and articles are written on the problems of allergic reactions to drugs and the problems of drug-induced schizophrenia.[38]

One may read day after day of action on the part of the Food and Drug Administration to restrict or withdraw drugs on the market and of congressional hear-

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[36] Joseph F. Sadusk, M.D., quoted in Life Magazine, July 3, 1964, p. 38, col. 4. Dr. T. Sollman, a distinguished pharmacologist, has said: "It is necessary still to emphasize that the administration of potent drugs involves a 'calculated risk' where the presumptive benefit is balanced against the possibilities of toxic effects and idiosyncrasies." Hearings Before Intergovernmental Relations Subcommittee of House Committee on Government Operations, 88th Cong., 2d Sess., p. 147 (March 24, 1964). The subcommittee noted: "There is no such thing as absolute safety in drugs . . . . There are drugs that are less liable to cause harmful reactions than others, but people die every day from drugs generally regarded as innocuous . . ." Ibid.

[37] Reported in Life Magazine, July 3, 1964, p. 38, col. 2. See Max Levin, M.D., American Handbook of Psychiatry 1223-30 (1959).

[38] E.g., Alexander, Reactions with Drug Therapy (1955); Max Levin, M.D., American Handbook of Psychiatry, pp. 1223-30 (1959); Van Winkle, "The Safety of New Drugs," 2 Stanford Medical Bulletin No. 3, pp. 103-7 (August 1944); Smith, "Problems Raised by New Drugs," XIX Assoc. of Food and Drug Officials of U.S. No. 4, pp. 144-50 (Oct. 1955); Smith, "Evaluation of Safety of New Drugs," 1 The Journal of New Drugs No. 2, p. 59 (Mar.-Apr. 1961); Popper, "Drug Induced Liver Disease," 115 Archives of Internal Medicine, pp. 129-36 (Feb. 1965); Welsh, The Fixed Eruption (1961); Welsh, Side Effects of Anti-Obesity Drugs (1962); "No Absolute Safety," 54 Journal American Pharm. Ass'n 217-20 (May 1964).

ings developing laxity on the part of the policing effort.[39] One need only mention thalidomide[40] and parnate[41] (Wash. Post 2/25/64) to appreciate what may occur from drugs. But one can also mention orabilex[42] phenacetin,[43] meclizine, cyclizine and chlorcyclizine,[44] and many others.[45]

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[39] E.g., Washington Evening Star, Oct. 25, 1965, pp. A-1, A-6; Washington Post, June 10, 1965, p. A9; Washington Post, June 11, 1965, p. A3; Washington Post, October 25, 1965, pp. A1, A15. See Harris, The Real Voice (1964).

[40] Phocomelia and Internal Defects Due to Thalidamide, British Med. Journal, Dec. 15, 1962, p. 1447; Thalidamide Babies, British Med. Journal, August 25, 1962, p. 523; Deformities Caused by Thalidamide, H.M. Stationery Off., Minister of Public Health.

[41] Washington Post, February 25, 1964, p. A1. For a more detailed description, see Hearings Before Intergovernmental Relations Subcommittee of House Comm. on Government Operations, 88th Cong., 2d Sess., p. 686 (Jan. 25, 1965).

[42] Washington Post, February 14, 1964, pp. A1, A8; see Hearings Before Intergovernmental Relations Subcommittee of House Committee on Government Operations, 88th Cong., 2d Sess. at 865 (June 17, 1964).

[43] Washington Evening Star, January 4, 1964, p. A2.

[44] Washington Evening Star, May 6, 1966, p. A2.

[45] E.g., penicillin has been reported by a Food and Drug Administration Committee to cause allergic reactions ranging "from mild and transient manifestation to fatal anaphylactic shock . . ." FDA Report on Enforcement and Compliance, Feb. 1965, p. 5. Dr. Howard Weinstein, M.D., research director of the Food and Drug Administration has been quoted as saying: "about 3000-4000 persons in the United States suffer severe reactions to penicillin each year, and of these 300-400 die." Waimbrand, Max. N.D., D.C., The Encyclopedia of Natural Health 101 (1962). See also id. at 336-38 for references concerning effect of digitalis and mercurial diuretics. For the effect of phenmetiaizin, see Phenmetiaizin and Foetal Abnormalities, British Medical Journal, Dec. 15, 1962, p. 1610; of ancoloxin, see Thalidamide Babies, British Med. Journal, August 25, 1962, p. 523; of flexin, see Hearings Before Intergovernmental Relations Subcommittee of House Committee on Government Operations, 88th Cong., 2d Sess. at 568, Exhibit No. 2 (April 28, 1964); and of chloromphenical, see Id. at 229 (March 25, 1964), and Alexander, Reactions with Drug Therapy 104 (1955).

The issue in this case is not whether all drugs should be banned or whether medical science should be outlawed. Rather the issue in this case is whether one can choose for himself and his family not to be subjected to such dangers; whether one has the right to choose to follow a healing art that is not in the majority.

There are several such dissident healing arts in this country. The healing art in the majority is allopathy, which believes strongly in the use of surgery and drugs.[46] In the minority today, although once in the majority, is homeopathy, which believes in a bare minimum use of drugs. Also in the minority but no longer pilloried in most states are osteopathy and chiropractic, which place heavy or exclusive reliance upon manipulation along with diet control. Further, there are the healing arts that focus almost entirely upon diet, disavowing drugs of all types, and depending upon foods and withholding of foods to assist the body in curing its own ills. Here there is a belief that many or all ills are caused by the presence of toxins which must be eliminated so that the body functions can be restored; drugs being toxins are of no assistance.

This case concerns the right of a person to choose among these various healing arts, majority or dissident, and to practice the healing art of his choice upon himself and, at least until the state steps in as parens patriae, upon his children. This issue has not yet come before this Court. But it is of fundamental importance warranting review in this case.

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[46] That the majority itself is far from unanimous in its view is common knowledge. See, e.g., Ingelfinger, Relman, and Finland, Controversy in Internal Medicine (1966).

Petitioner in this case, knowing of the admitted dangers of drugs and surgery,[47] in the exercise of mature judgment, and what he considered the best of due care, chose a dissident healing art for himself and for the child that he loved.[48] If this be a crime, then all healing art will remain static, where the majority now has it placed. If this be a crime, then the majority when our country was founded could have enforced with the threat of jail or worse the then prevailing practice of bleeding those who were sick—and sometimes, as in the case of President George Washington, bleeding them to death. If this be a crime, then a Sigmund Freud could not come forth with new theories of the twentieth century and expect to find any patients. If this be a crime, then a man no longer has a right to choose the means of protecting and preserving what is fundamental to his own life and well-being, his health. He is limited to following the majority in what must be admitted to be an imperfect art.

Ample testimony in this case shows that diet control and fasting is a recognized practice. It is followed by chiropractors[49] and by medical doctors.[50] And it is

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[47] Tr. 370-73, 211, 404, 436. Mr. Sullins stated: "But after thalidamide and a few things like this, why, it becomes of concern to people like me who are watching it carefully .... And I'm watching it carefully because there's been some very, very tragic examples my—among by brothers and sisters." (Tr. 436).

[48] See note 31, supra. Also see Tr. 401, 404, 517, 520. Mr. Sullins consulted Dr. Shelton of Texas (Tr. 155, 635, 638-48) whom he considered the best in the country (Tr. 350, 381).

[49] E.g., Tr. 239-40, 249-51, 265 (testimony of Jordan B. Jensen, D.C.); Tr. 273, 319, 321-23, 326-27, 330 (testimony of Gerald Benesh, D.C.); Waimbrand, Max, N.D., D.O., The Encyclopedia of Natural Health (1962).

[50] E.g., Tr. 492, 496-500, 505-07, 515 (testimony of Henry G. Bieler, M.D.); Tr. 743 (testimony of Robert P. Watterson, M.D.); Tr. 602 (testimony of Victor A. Mueller, D.D.S.); Henry Lindlar, M.D., Natural Therapeutics 1-51 (1926).

recognized and licensed as a healing art in many states.[51] If it be quackery, it be so only because the majority and the powerful who define quackery choose to call it such. What must be the law was perhaps best summed up by the Supreme Court of Florida in *Baldor* v. *Rogers,* 81 So. 2d 658, (emphasis added):

> [T]he heroic effort being made by members of the medical profession and other scientists only emphasizes that an enemy is so far being fought in the dark and that *one man should not be condemned from the fact alone that he chooses a weapon that another may consider a reed.* . . . How strange would now appear a judicial decision made a few generations ago that a physician who did not bleed his patient was so callous to accepted treatment that he was a malpractitioner.

There is today a respectable minority that eschews drug therapy and that chooses to rely on diet and on fasting. This minority has gained recognition in many states through licensing of practitioners who treat others in this manner. Although not every state chooses to permit one to practice this healing art for gain upon others unless the practitioner also has knowledge of other healing arts (see *Hitchcock* v. *Collenberg,* 140 F. Supp. 894 (D. Md., three judge court), affirmed 353 U.S. 919), no state should be able to prohibit a li-

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[51] E.g., Va. Code 24-273 (1958); Ohio Rev. Code Ann. 4731.15; Indiana Stat. Ann. 63-1312 (Burns ed.); Ill. Stat. Ann. Tit. 91, Sec. 9; Alabama Code, Tit. 46, Sec. 259; Michigan Stat. Ann. 14:533. Several states provide expressly that (in the words of the Minnesota statute): "The several boards or other officers whose duty it shall be to administer or carry into effect the provisions of this chapter shall . . . in no manner discriminate against any system or branch of healing." Minn. Stat. Ann. 146:15. See also Iowa Code Ann. Vol. 9, Chap. 146.2; Kansas Stat. Ann. 65-2802; Col. Rev. Stat. 91-1-6, 91-5-4 (1963). See also § 1000-7, Calif. Bus. & Prof. Code; Oosteveen v. Bd. of Med. Examiners, 112 Cal. App. 201, 246 P.2d 136; Crees v. Bd. of Med. Examiners, 213 Cal. App. 2d 195, 28 Cal. Reptr. 621.

censed practitioner of a healing art from advising diet control as a part of his therapy. Nor should a state that has not reached ultimate omniscience punish one who chooses to forego drugs and utilize methods of natural hygiene and fasting as the healing art of his choice. In *Hitchcock,* while ruling that the State of Maryland need not license a naturopathic practitioner who lacks certain medical knowledge, the three-judge court went out of its way to emphasize that Maryland "does not prevent plaintiffs from applying the tenents of naturopathy in their treatment of themselves and their families . . . ." Yet, California has now punished this petitioner for this very act.

It may be argued that petitioner had a right to practice what he will upon himself; but when it comes to his daughter certain lines must be drawn. This case does not require that a decision be reached encompassing all conceivable practices. It involves one only: the failure to take his daughter to a medical doctor but instead following the practices of naturopathy. It involves the right of a parent to choose for his child a healing art that has respectable recognition in practice and in the law; a right and indeed a duty possessed by the parent at least and until the state assumes whatever power it has as parens patriae to supplant the judgment of the parent.

Petitioner it must be recognized was not really convicted for practicing naturopathy. Rather he was convicted for having practiced upon his child the tenents of naturopathy and having failed. Thus it is the basic teaching of the court below that one may dissent in the healing arts only at the risk of facing criminal charges should the patient die. This is not the sword hanging over the practice of the majority-blessed healing art. Allowing this sword to hang over the dissidents removes any right to dissent. What is now practiced by

the majority becomes sacrosanct; no medical doctor is criminally charged for administering a drug that fails to cure; no drug company is held criminally responsible for putting such a drug on the market. Yet the dissidents must cure or face the wrath of the state. This cannot be the law. Benjamin Rush, medical doctor and signer of the Declaration of Independence, is reported to have summed it up in these terms: "The Constitution of the Republic should make provision for medical freedom as well as religious freedom. To restrict the art of healing to one class of men and deny equal privilege to others will constitute the bastile of medical science."[52] That is the issue of this case that calls for review by this Court.

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[52] Quoted in 3 Medical Freedom 2 (1914). In two lectures in 1801 Dr. Benjamin Rush stated in precise terms the central issue of this petition:

> "I shall begin by briefly enumerating the causes which have retarded the progress of our science . . . . 21st. The interference of government in prohibiting the use of certain remedies, and inforcing the use of others by law. The effect of this mistaken policy has been as hurtful to medicine, as a similar practice with respect to opinion, has been to the Christian religion. 22d. Conferring exclusive privileges upon bodies of physicians, and forbidding men of equal talents and knowledge, under severe penalties, from practising medicine within certain districts of cities. Such institutions, however sanctioned by ancient charters, are the bastiles of our science." The Progress of Medicine, A Lecture (1801).

> "Let me remind you, that improvement in medicine is not to be derived, only from colleges and universities. Remember how many of our most useful remedies have been discovered by quacks. Do not be afraid, therefore, of conversing with them. . . . Medicine has its Pharisees, as well as religion. But the spirit of this sect is as unfriendly to the advancement of medicine, as it is to Christian charity. . . . further . . . let me advise you to converse with nurses and old women. Even negroes and Indians have sometimes stumbled upon discoveries in medicine." The Vices and Virtues of Physicians, A Lecture (1801).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a writ of certiorari should be granted.

Respectfully submitted,

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April 1966

APPENDIX A

Opinion, Superior Court for County of San Diego, California

1167 The Court: People vs. Donald E. Sullins. The record may show the defendant is present with his counsel and the Deputy District Attorney is in attendance. The matter comes on this morning for decision.

The Court wishes to begin his comments on this most interesting case by acknowledging his appreciation to counsel for the manner in which the case was tried. Each counsel did an outstanding job, not only of preparation but also of presentation. You were not only considerate of the Court but also of each other. Examination and cross-examination were both conducted in a complete but concise manner. In short, your performance in this trial was a demonstration of real advocacy.

The defendant is charged, pursuant to an indictment filed against him in this court with the offense of involuntary manslaughter in violation of Section 192.2 of the Penal Code. The victim of the homicide was Rhea Sullins, the minor daughter of the defendant. The type of manslaughter involved in this case is defined by the Code as the unlawful killing of a human being without malice either, first, in the commission of an unlawful act not amounting to a felony, or, secondly, in the commission of a lawful act which might produce death, in an unlawful manner or without due caution and circumspection.

1168 Much was said during the trial concerning the natural and legal rights of parents with respect to the responsibilities and duties involved in the control of their children. Let me point out that it is well settled in this state that the rights of parents as the natural guardians of their children are not absolute but are subject to the supervisory control of the State and may be controlled by both statutory and judicial action. While the State's right to intervene and protect the child against the abuse of parental authority does not give it power to interfere with the natural liberty of parents to direct the upbringing of

their children, it does, however, set up the rule of reason, which circumscribes the uncontrolled right of a parent to set up his or her own standard of conduct and thereby subjects his or her actions to reasonable regulation by the State. The authority for this proposition is set forth in 37 Cal. Jurisprudence 2d and in the case of Anthony vs. Tarpley at 45 Cal. App. 2d, 72.

It must be generally conceded that there is a legal as well as a moral obligation on the part of parents to furnish their minor children with the necessities of life. These obligations have been held to include the furnishing of food, clothing and shelter, and such medical attention or attentions in the case of illness as are absolutly requisite to relieve physical suffering and pain and to overcome or conquer disease, if by such attention it can be done.
1169 This comes to us by case law through Evans vs. Noonan, reported at 20 Cal. App., 288, cited with approval in Los Angeles Finance Company vs. Flores, 110 Cal. App. 2d Supplement, 850.

The restriction of parents' authority with respect to an infant has likewise been held to be a valid exercise of the police power of this State. Examples of the statutory manifestations of this authority are found in Sections 272 and 273a of the Penal Code. Section 600 of the Welfare & Institutions Code furnishes us with still another example of the statutory enactment of this power of the State.

It is well settled law in this State that something more than ordinary negligence is needed to constitute lack of "due caution and circumspection" as used in Penal Code Section 192, Subdivision 2, declaring that one is guilty of manslaughter if a human being is killed in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection, and to impose criminal liability for a homicide, negligence must be aggravated, culpable, gross or reckless; that is, the accused's conduct must be a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with

proper regard for human life, or in other words, disregard or indifference to the consequences. Therefore, an act is criminally negligent when a man of ordinary prudence could foresee that the act would cause a high degree of
1170 risk of death or great bodily harm.

It is likewise well settled law in this state that the acts made punishable as misdemeanors by Penal Code 273a, which acts now are felonies, relating to cruelty towards children and endangering bodily health or the life of a child amount to unlawful acts within the meaning of Penal Code Section 192 defining involuntary manslaughter as homicide in the commission of an unlawful act. The authority for this proposition is found in People vs. Villalobos, 208 Cal. App. 2d, 321.

No detailed recitation of the evidence is intended by me, and I wish it to be clearly understood that I am not herein attempting to cover any phase of the evidence with particularity. I am simply attempting to cite certain significant portions of the evidence, as I interpreted it, so that my findings may be more easily understood.

The People contend that the defendant is guilty of a violation of Section 192.2 of the Penal Code upon any one or all of the three following theories: First, that the defendant is guilty of a violation of Section 272 of the Penal Code because his daughter's death arose or was contributed to by a violation of that section. Secondly, that the defendant is guilty of a violation of Section 273a of the Penal Code, then a misdemeanor, now a felony, and that his daughter's death arose or was contributed to by a violation of that section. Third, that Rhea's death
1171 arose in the commission of a lawful act accomplished without due caution and circumspection.

The defendant, on the other hand, contends that he violated no statute or legal obligation, since he has a right to believe as he chooses; that he has a freedom of choice of medical assistance; that the evidence as to the cause of death was inconclusive; that the defendant had a right to rely and did rely upon the advice of one Dr. Shelton; that

since the defendant loved his daughter, his actions cannot be construed as showing any intent to fail to furnish any necessary of life to her; that his actions cannot be construed as being negligent. Next and finally, that the prosecution's evidence is in all respects insufficient to sustain, or permit a conviction.

I now find that the evidence here shows:

First, that Rhea Sullins, age seven, the defendant's daughter, died on March 9, 1963, from bronchial pneumonia, contributed to by malnutrition and inanition. In this connection, permit me to state that while the medical evidence was in some particulars conflicting, I had no problem in concluding, as I have stated, that this child's death was contributed to by malnutrition and inanition.

Secondly, that the medical evidence establishes that Rhea Sullins was in an advanced state of emaciation on autopsy; that there was little or no subcutaneous fat present; that as the lay witnesses for the prosecution aptly
1172 put it, she was "skin and bones"; that Rhea lost approximately one-third of her body weight, that is, she decreased in weight from 51 pounds to 34.12 pounds during her illness of forty-four days; that during these forty-four days she was fasted by her father for either seventeen and a half or eighteen and a half days, during which time she received no food whatever, and for another seventeen and a half days she received juices only, the exact amount of which is not disclosed by the evidence. That during the acute stages of her illness no medical doctor, physician or surgeon, or other licensed health practitioner, saw the child; that the only medical licensee who saw her from the time she was sent home from school in January to the time of her death was the examination of February 2, 1963, by Dr. Jensen, a licensed chiropractor, who found Rhea to be in a serious condition and so advised the defendant. It likewise appears from the evidence that one Dr. Shelton of San Antonio, Texas, or a nearby suburb, was contacted by the defendant from time to time by telephone; that this Dr. Shelton is allegedly an authority

on therapeutic fasting; that the defendant considers him to be his medical consultant; that according to defendant, Shelton advised a fast after the child became critically ill on February 11th with a temperature of 105.25, when she was gasping for breath and could not lie down; that this fast continued for fourteen and a half days; that the child's fast was finally broken because of too much
1173 weight loss; that the defendant allegedly asked Dr. Shelton over the phone if he could bring the child to him in San Antonio, but Shelton refused because the child was too weak. That on or about February 26th defendant concluded there was nothing more that could be done, so he did not take the child to see any practitioner, nor did he call any practitioner to his home, nor did he take any other action to obtain advice or treatment for Rhea, other than to call Shelton a few more times. That the photographs admitted in evidence showing the child at death reveal a very emaciated corpse, even after the injection of 200 cc's of tissue filler in her face by the mortician.

Other significant findings which I adduced from the evidence indicate that the defendant placed Rhea on a fast for three days at the outset of her illness and that she objected to this. The defendant himself admits that fasting in itself can be potentially dangerous to life.

That the defendant informed a witness that on or about the night of February 11th Rhea was suffering from a temperature of 105.25 degrees, and that she could not breathe or lie down; that the defendant told the witness of fevers which went up as high as 104, 105 and 107 degrees; that the defendant was urged by fellow workers to take her to some doctor; that the witnesses who observed the child during her illness concluded that she was nothing but skin and bones; that Mrs. Peet, who took her tem-
1174 perature at various times at defendant's request, found it to range between 101 and 105.

Dr. Jensen, who examined Rhea on February 2nd, advised the defendant at that time that she was in a serious

condition; that he heard chest rales and that her heart was fast; that she had a temperature of 103 and complained of pains in her wrist. At that time Dr. Jensen prescribed a building program, not a fast. He testified further that Sullins called him within the following week to state that he was discontinuing his treatment, was not following his program and was going to fast her.

A Mrs. Rich testified that almost daily the defendant talked of Rhea's illness at work; that the defendant reported fevers of 103, 104 and 105 to her. He also advised her that he was used to tragedy and that this was the only way. The defendant himself admitted that he was aware of the seriousness of the case as the disease progressed. The defendant testified that after his conversation with Shelton on February 26th concerning Rhea's condition that he took her to no one else, because there was nothing else to do. In his statements to Officer Bender defendant made significant admissions, among which was the amazing admission that on March 8th Rhea had a slight delirium.

That People's Exhibit No. 13, the defendant's letter to his mother-in-law dated March 7, 1963, is a declaration by him demonstrating that he made the decisions as to what course or courses would be followed in treating Rhea during her illness. As he puts it, "Anyway, I've had my way during the illness by using dynamite."

These remarks could be extended indefinitely and other specific findings of fact could be made, since the evidence introduced by both the People and the defendant was quite detailed. This is particularly true of the medical evidence in the case, however, as I have heretofore indicated, I have found that Rhea's death, medically speaking, resulted from bronchial pneumonia contributed to by malnutrition and inanition.

I have reviewed all of the evidence; I have studied the authorities cited by counsel, and I find that I am satisfied beyond a reasonable doubt that the defendant's unlawful conduct was criminal and resulted in the death of his own daughter. I therefore find him guilty as charged.

APPENDIX B

(Filed October 5, 1965)

IN THE DISTRICT COURT OF APPEAL, FOURTH APPELLATE DISTRICT
STATE OF CALIFORNIA

4th Crim. No. 1684

THE PEOPLE, *Plaintiff and Respondent,*

v.

DONALD E. SULLINS, *Defendant and Appellant.*

Opinion

APPEAL from a judgment of the Superior Court of San Diego County. William P. Mahedy, Judge. Affirmed.

Luke McKissack and Burton Marks, for Defendant and Appellant.

Thomas C. Lynch, Attorney General, William E. James, Asst. Attorney General and William L. Zessar, Deputy Attorney General, for Plaintiff and Respondent.

The defendant starved his daughter until she died; was charged with involuntary manslaughter, i.e., a violation of Penal Code § 192, subdivison 2; was found guilty after trial by the court without a jury; was granted probation; and appealed.

Contentions on appeal are: (1) The insufficiency of the evidence to establish, (a) the corpus delicti of the offense without reliance upon extrajudicial statements by the defendant, (b) the element of criminal intent or criminal negligence, or (c) the existence of the element of willfulness insofar as violations of Penal Code sections 270 or 273a are involved; and, (2) alleged error in the admission of incriminating statements by the defendant contrary to the exclusionary rule announced in *People* v. *Dorado,* 62 Cal. 2d 338.

The elements of the corpus delicti of the offense with which defendant was charged are the death of the alleged victim and the existence of some criminal agency as its cause. (*People* v. *Amaya,* 40 Cal. 2d 70, 75; *People* v. *Villalobos,* 208 Cal. App. 2d 321, 325; *People* v. *Rodriguez,* 186 Cal. App. 2d 433, 436.) There is ample evidence, independent of any statements by the defendant, supporting the conclusion that his daughter, Rhea, age 7 years, died on March 9, 1963; that the immediate cause of death was pneumonia; that the major contributing cause of death was starvation; and that the starvation resulted from a fast imposed upon the victim by defendant. This evidence was sufficient prima facie proof of the corpus delicti.

The defendant's argument in support of his contention that the evidence is insufficient to sustain the finding of criminal intent or criminal negligence is directed to its weight rather than its sufficiency as a matter of law, contrary to the fundamental rule on appeal. (*People* v. *Daugherty,* 40 Cal. 2d 876, 885.) There is evidence supplied by the testimony of doctors, neighbors of the defendant, and his co-workers which, supported by inferences reasonably deducible therefrom sustains the conclusion that the defendant willfully subjected his daughter to a fast, when she was seriously ill, to prove his belief that fasting was a cure for illness even though he knew that in doing so her illness might result in death and that the fast so imposed was a major contributing cause of the pneumonia which was the immediate cause of death.

Rhea became ill on January 25, 1963. During the first part of her illness the defendant contacted a medical doctor concerning such by telephone, but refused to follow this doctor's advice because it did not conform to his belief that the administration of drugs was not a proper method to cure an illness. At this time he subjected his daughter to a fast, depriving her of all food and permitting consumption of only water. Thereafter he consulted a

chiropractor, because the latter was a drugless practitioner, who advised him against the fast and, on two occasions, impressed upon him the seriousness of the illness from which his daughter was suffering, stating that she had a deep-seated infection. Although the defendant claims that following this advice he placed his daughter on a conventional diet, during which time her condition became worse, the evidence supports the inference that he maintained the strict fast imposed upon his daughter at all times from the beginning of her illness until the day before her death, a period of 43 days, with the exception that for a short period she was given juices. During this time the daughter's temperature was abnormally high, and for the greater part thereof ranged from 101° to 105°. At the time of her death she weighed 34 pounds, whereas the normal weight of such a girl would have been 54 pounds. Her condition was described as "skin and bones". During her illness the defendant claimed that his daughter was suffering from a heart condition, and after her death he persisted in this contention even though the autopsy on her body indicated no heart defect. On the other hand, in the early stages of his daughter's illness the defendant told a co-worker that she was suffering from rheumatic fever complicated by pneumonia, which supports the conclusion that he had knowledge of the illness which eventually was the immediate cause of his daughter's death. Subsequent to defendant's initial consultation with a medical doctor, a co-worker suggested, on several occasions, that he should seek the advice of a medical doctor but he refused to follow these suggestions. Instead, he told this co-worker that he might lose his daughter but that he was used to tragedy and that this, i.e., the fasting he had imposed upon his daughter, was the only way. Prior to the time his daughter became ill the defendant had expressed the wish to fast his daughter for 30 days. On one occasion defendant told a co-worker that his mother had told him he was starving his child to death. After her

death he expressed the hope that he might have another child because the next time he would prove he was right. The evidence justifies the conclusion that the defendant was using his daughter as a subject of an experiment to prove his belief that fasting was a cure for any illness even though he knew that his doing so might result in her death.

Presently acceptable definitions of criminal negligence are found in *People* v. *Penny*, 44 Cal. 2d 861, 879, *People* v. *Villalobos, supra*, 208 Cal. App. 2d 321, 326-328, and *People* v. *Rodriguez, supra*, 186 Cal. App. 2d 433, 440. Applying these definitions to the situation at hand, we conclude that the evidence as stated supports the conclusion of the trial court implied in its finding of guilt that, in imposing the fast upon his daughter under the circumstances related, the defendant was criminally negligent.

Defendant was a member of the American Natural Hygiene Society. He claimed that in imposing the fast upon his daughter he acted upon the advice of a hygienic practitioner in San Antonio, Texas, with whom he consulted via telephone; that he acted in good faith; and his conduct in the premises was not culpable. The trial court was not required to accept either his testimony in this regard or his conclusions based thereon.

There is no merit to the contention that defendant did not act willfully within the meaning of the law prescribing willfulness as an element of the offense with which he was charged. The conclusion of the trial court that the defendant was guilty of involuntary manslaughter as defined in § 192 of the Penal Code, is supported by the finding implied therein that the defendant's conduct, although lawful, was such as "might produce death in an unlawful manner, or without due caution and circumspection." As noted, the necessary element of criminal negligence which is a part of this offense is adequately supported by the evidence. Furthermore, the conclusion of the trial court also is supported by the further implied

finding that the defendant's conduct constituted an unlawful act within the meaning of § 192 of the Penal Code, viz, a violation of § 273a of the Penal Code,[1] and that adequate proof of both willfulness and criminal intent or criminal negligence as elements of that offense was supplied by the evidence.

The defendant's contention that the court erred in admitting incriminating statements made by him in the course of two interviews by a deputy sheriff, occurring respectively on April 1, 1963 and April 3, 1963, is based upon the premise that these interviews occurred during the accusatory stage of the proceedings, as defined in *People* v. *Dorado, supra,* 62 Cal. 2d 338. Preliminary to these interviews the defendant was not advised of his right to counsel and to remain silent, although prior to the second interview he had retained counsel and was advised by the latter to cooperate with the police. Approximately six months elapsed between these interviews and the return of the indictment charging defendant with manslaughter. The exclusionary rule did not apply because the statements were made during the investigatory rather than the accusatory stage of the proceedings; the defendant was not in custody at the time; and, under the circumstances of this case, the process of investigation conducted by the deputy sheriff was not such as to lend itself to eliciting incriminating statements. (*People* v. *Stewart,* 62 Cal. 2d 571; *People* v. *Davis,* 235 A.C.A. 248, 260; *People* v. *Garrett,* 235 A.C.A. 155, 159; *People* v. *Luckman,* 235 A.C.A. 89, 92; *People* v. *Katz,* 234 A.C.A. 480, 488-490; *People* v. *Miller,* 233 A.C.A. 385, 387.) Defendant relies upon the fact that the interviews were tape-recorded as proof that they were a process of interrogation lending itself to eliciting incriminating statements. However, this fact, of itself, does not dictate such a conclusion; is a cir-

[1] Although a violation of § 273a of the Penal Code now is a felony, at the time of the events under consideration, it was a misdemeanor.

cumstance to be considered along with other circumstances; and in the instant case constituted no more than the adaptation of modern recording methods to general investigation procedures. Furthermore, the statements made by the defendant did not constitute confessions and, after a review of the entire case including the evidence, we have concluded that it is not probable that a different result would have occurred if the statements had not been admitted. Under these circumstances, any alleged error in their admission would not justify a reversal. (*People* v. *Dorado, supra,* 62 Cal. 2d 338; *People* v. *Robinson,* 62 A.C. 942, 949; *People* v. *Hillery,* 62 A.C. 726, 745-746.)

The judgment is affirmed.

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SUPREME COURT, U. S.

No. 1261

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

DONALD E. SULLINS, *Petitioner*

v.

CALIFORNIA

MOTION OF THE NATIONAL HEALTH FEDERATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS, FOURTH APPELLATE DISTRICT, STATE OF CALIFORNIA

KIRKPATRICK W. DILLING,
Esquire
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2. As is more fully developed in the attached brief, this Federation represents many tens of thousands of persons who believe in dissident healing arts. This

case affects all of them in their right to choose a healing art for themselves and their families. This brief amicus is filed to present the views of these interested persons.

3. The Attorney General's office of the State of California was requested to stipulate to the filing of this brief amicus without motion. This request was denied. It is therefore necessary to present this motion.

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The National Health Federation is a nationwide organization of tens of thousands of members and associate members in every state in the Union who believe in freedom in health matters. The organization believes in the freedom of individuals to have and use so-called health food products, natural foods as distinguished from highly processed foods and foods which have been subjected to all kinds of chemical sprays, some of which have been found to be dangerous

to the health. The Federation believes in the right of all citizens to be free from forced medication and forced chemicalization. The Federation believes in the freedom to choose the natural approach to health and the right not to be forced to practice any other particular healing art.

The Federation urges upon this Court the realization that the current majority healing art, known as allopathic medicine, has not reached perfection. Indeed, as the petition in this case points out, people die every day even when they are under the care of the best doctors that allopathic medicine or any other healing art can offer. Man has gone through many stages in his search for health. He has tried many approaches. Many of these have proved to be blind alleys. He has learned bits and pieces. Some of what he has thought he has learned has proved not to be so. He once bled people and used leeches. He has since time immemorium experimented with herbs and diet supplements. He has but recently begun to experiment with chemical drugs. In all of these attempts he has made what he thought was progress. Sometimes there was real progress. Often time showed that he had to retract.

The Federation does not claim that allopathic medicine has not made discoveries and has not experimented through the extensive use of drugs and surgery in areas hitherto not as extensively explored. But the Federation does urge that allopathic medicine has not yet cornered the market on the truth. And indeed as can be seen from the results of many of its experiments with drugs it has often discovered that its experiments can harm and kill. Unfortunately, allopathic medicine, as other disciplines, has discovered that it too can become infected by those who wish to experiment

for profit, who market drugs with more concern for corporate pocketbooks that for cure, and who dispense drugs under an MD license for experimentation purposes—collecting from both the patient and the drug company.

Permitting one group to become a state-endowed monopoly is as dangerous in the healing arts as it is in economics or in political thought—perhaps more so, for here we are dealing with life itself. Unfortunately man can be jealous of the known and reluctant to even consider what is new or different. History has shown that men of medicine can be as narrow and uncompromising as other men. History has shown that many discoveries that we now consider significant were rejected by the majority and their discoverers hounded. History contains many examples to prove this point. Recently two distinguished Senators, Lister Hill of Alabama and Paul Douglas of Illinois, had occasion to discuss this very matter on the floor of the United States Senate (109 Cong. Rec. 14499, 1963):

> Mr. DOUGLAS. Is it not true that Joseph Lister was nearly driven out of the medical profession by the British Medical Association because he said that surgery which was not antiseptic gave rise to infections and caused great mortality among the patients?
>
> Mr. HILL. He was subjected to many attacks.
>
> Mr. DOUGLAS. By the British Medical Association?
>
> Mr. HILL. By men prominent in that association.
>
> Mr. DOUGLAS. Is it not true that Lister was merely following the teachings of the great French physiologist, Louis Pasteur who discovered the germ theory of disease?
>
> Mr. HILL. He applied the discoveries of Pasteur to surgery.

Mr. DOUGLAS. Is it not true that Pasteur was nearly driven from his chair at the University of Paris by the doctors and physiologists of France?

Mr. HILL. That is correct.

Mr. DOUGLAS. Looking back in history, is it not also true that Semmelweis—and in our country Oliver Wendell Holmes, Sr.—who discovered the cause of puerperal fever, resulting in death of women in childbirth—the cause being the dirty hands of doctors—was nearly driven from the profession?

Mr. HILL. The truth is that poor Semmelweis was a martyr to the cause. He died, driven and hounded to his death.

Mr. DOUGLAS. He was driven to his death by the doctors?

Mr. HILL. That is true, because he insisted on washing his hands after he came out of the dissecting room, before he delivered a woman of a child.

Mr. DOUGLAS. It was thought that that was a reflection on the medical profession, who believed that their hands were always clean and could not have anything on them that would infect others.

Mr. HILL. Yes.

Mr. DOUGLAS. Is it not also true that Dr. Jenner, who developed the theory and practice of vaccination as a preventative, also was persecuted by the medical profession?

Mr. HILL. He was. He observed that the women in Scotland who milked cows and had cowpox largely secured an immunity from smallpox. That gave him the idea and he developed the vaccine which was the first vaccine we had against a dread disease.

Mr. DOUGLAS. Is it not true that the teachings of Lister were brought to this country by the celebrated Dr. W. W. Keen, who, after the Civil War, went to Scotland and studied under Lister and then came back to practice in Philadelphia, and who was virtually driven out of practice in

Philadelphia by the medical association and was only saved by some adventurous people on the board of the Pennsylvania General Hospital.

Mr. HILL. Dr. Keen was, according to history, the first American surgeon to use Lister's methods in Philadelphia.

Mr. DOUGLAS. As a young man, I spent an evening with Dr. W. W. Keen, who spoke of the persecution he had been subjected to by the leaders of the medical profession in the city of Philadelphia.

Mr. HILL. He was a very remarkable man. Keen's 14-volume work was almost a bible for surgery procedures.

Mr. DOUGLAS. Is it not true that Robert Koch, developer of 606, who did work on tuberculosis, suffered from persecution by the German medical association?

Mr. HILL. He did, as William Harvey, the discoverer of the circulation of the blood, had suffered.

Mr. DOUGLAS. So the medical profession in many instances sought to persecute and defeat the professional men who were later hailed as great discoverers?

Mr. HILL. There are a great number of instances of that kind.

The instant case is important in this struggle against monopoly in the healing arts. Here, as the petition points out, Mr. Sullins is convicted of having refused to use the practice of a healing art in which he does not believe but instead the practices of one in which he does believe, and his daughter died. He was accused of a crime, but at trial his action was not measurged against the standards of the healing art which he followed. Rather it was measured against the standards of the healing art of the majority. Thus, the State of California has become an instrument for

the work of the majority healing art. It has placed itself in the position of stamping out those who dare to disbelieve. As it today hounds Mr. Sullins, it would yesterday have hounded a Lister, a Pasteur, a Jenner, a Koch, an Oliver Wendell Holmes, Sr. And the day before it would have accused and convicted those who dared refuse to bleed during illness or use leeches. From this, progress does not come. From this, man in control may be more comfortable and secure in his comparative ignorance, but he does not learn.

In this context the instant case is of great significance to all Americans. Because of this significance, it is respectfully urged that this Court review the action of the court below.

Respectfully submitted,

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sons who believe in dissident healing arts. This case affects all of them in their right to choose a healing art for themselves and their families. This brief amicus is filed to present the views of these interested persons.

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1. The American Natural Hygiene Society, Inc., a non-profit corporation organized under the laws of the District of Columbia, has many thousands of members throughout the United States who believe in the maintenance of health through natural means. The emphasis is placed on prevention: an ounce of preservation is worth more than a pound of restoration. Natural hygiene encourages the maintenance of all conditions of health and the avoidance of all causes of impaired

health. The means of natural hygiene must be adapted to the needs and capacities and conditions of the individual, in sickness and in health. Natural hygiene thus seeks to restore normal functioning power by the judicious employment of the normal elements of health, such as an abundance of pure air, adequate amounts of sunshine, wholesome natural foods (except where the condition of the body requires abstinence from food for its survival), pure soft water, elimination of such protoplasmic poisons which are toxic to the body structure. In addition the Society encourages physical exercise, sufficient amount of physiological rest and sleep, mental balance, emotional poise, and the avoidance of excesses and deficiences. Natural hygiene contends that ills cannot be cut away by surgery, sweated or massaged out, or pulled or twisted out, or electrically shocked out of minds. It believes that there are no substitutes for obedience to the laws of life and to the laws of nature. The Society concedes the existence of malfunction or non-function of specific organs, resulting in such diseases as diabetes, and will concede that under such circumstances, in the absence of such natural secretion as insulin, the need must be met by the use of a product chemically or synthetically produced and introduced into the body. However, these are limited areas and the Society opposes the broadscale use of drugs that poison rather than, or as well as, cure.

2. This brief amicus is filed not to duplicate what is contained in the petition for a writ of certiorari filed in this case, but to support and supplement that petition by urging that the import of the issues in this case far transcend the petitioner, Donald E. Sullins, and concern all Americans who desire that the freedom

to choose be available in fact as well as in well-touted theory. Mr. Sullins is not alone in his desire to avoid being subjected to toxins that are artificially injected, poured, or ingested into so many of our bodies. There are hundreds of thousands of Americans who have chosen not to practice allopathic medicine as advocated by the American Medical Association, but instead to practice on themselves and their families healing arts that they believe to be more efficacious.

Allopathic medicine preaches that all can be cured by ingestion of drugs and by the knife. When one set of drugs does not work, they have another set ready to be offered. When those that have been on the market for a time are exhausted, experimental drugs are tried, often without even advising the patient. From newspaper accounts and congressional hearings we know too that often these doctors are paid by drug companies to experiment on their patients, that often drugs are released for experimentation or general use without adequate testing, and that often drugs long on the market are pulled back or restricted because of the harm they are causing. Many Americans choose not to be subjected to such experimentation with toxins. It is this right to choose that is the central core of this case.

It is a right to choose, moreover, that is affirmative as well as negative. Our country has many healing arts in addition to allopathic medicine. There are practitioners of homeopathic medicine, osteopathy, chiropractic, naturopathy, and naprapathy among others. Each believes and advocates its own system. Some believe in certain small doses of proven drugs for specific ills. Others believe that all drugs are harmful. Some place emphasis on manipulation to

relieve pressures. Others do not place much faith in manipulation. Some believe in fasting as a curative practice. Others do not advocate fasting. Some place stronger emphasis than do others on diet control and exercise. But whatever their differences they present one thing in common: a choice from the healing art practiced by a majority of Americans.

The practitioners of these non-majority healing arts do not demand that all Americans follow their beliefs. But neither do they believe that they should be forced to follow the dictates of any other healing art or suffer the consequences. They desire and stand for the freedom to choose. That is what this case is about and that is why its significance far transcends the petitioner Donald E. Sullins.

Mr. Sullins was accused and convicted of a crime because he refused to follow the recognized majority healing art. He refused to take his child whom all admit he loved dearly to an allopathic physician for treatment with what he considered toxins. He knew of the damage that these toxins can cause and do cause. He was aware from personal experience and from newspaper and magazine accounts. He chose to follow the beliefs of another healing art in doing what he—the father charged with the responsibility—considered best for the daughter he loved. He is charged with a crime because, despite the best he could do, she died. This is a doctrine not applied to allopathic medicine. No one suggests that an allopathic physician or a parent who believes in allopathic medicine should be placed in the criminal dock when, despite their best efforts, the patient dies. Providing such consequences to the dissident healing arts removes the right to dissent. That is what this case is about.

For these reasons it is respectfully urged that this Court grant the petition for a writ of certiorari filed in this case.

Respectfully submitted,

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nied. He entered a plea of not guilty. [Cl. Tr. p. 7.] Petitioner and all counsel waived a jury trial. [Cl. Tr. p. 10.] Petitioner was found guilty as charged. [Cl. Tr. p. 22.] He was placed on probation for five years on the condition that he spend the first year in the custody of the sheriff and pay a fine of $2,000 plus $200 penalty assessment. [Cl. Tr. p. 23.] Petitioner filed a notice of appeal. [Cl. Tr. p. 4.] His conviction was affirmed by the District Court of Appeal, Fourth Appellate District, State of California. He filed a petition for hearing in the California Supreme Court which was denied.

Statement of the Facts.

"Rhea became ill on January 25, 1963.[1] During the first part of her illness the defendant contacted a medical doctor concerning such by telephone, but refused to follow this doctor's advice because it did not conform to his belief that the administration of drugs was not a proper method to cure an illness. At this time he subjected his daughter to a fast, depriving her of all food and permitting consumption of only water. Thereafter he consulted a chiropractor, because the latter was a drugless practitioner, who advised him against the fast and, on two occasions, impressed upon him the seriousness of the illness from which his daughter was suffering, stating that she had a deep-seated infection. Although the defendant claims that following this ad-

[1]Rhea was petitioner's seven year old daughter. It was her death that resulted in his conviction of involuntary manslaughter.

vice he placed his daughter on a conventional diet, during which time her condition became worse, the evidence supports the inference that he maintained the strict fast imposed upon his daughter at all times from the beginning of her illness until the day before her death, a period of 43 days, with the exception that for a short period she was given juices. During this time the daughter's temperature was abnormally high, and for the greater part thereof ranged from 101° to 105°. At the time of her death she weighed 34 pounds, whereas the normal weight of such a girl would have been 54 pounds. Her condition was described as 'skin and bones'. During her illness the defendant claimed that his daughter was suffering from a heart condition, and after her death he persisted in this contention even though the autopsy on her body indicated no heart defect. On the other hand, in the early stages of his daughter's illness the defendant told a co-worker that she was suffering from rheumatic fever complicated by pneumonia, which supports the conclusion that he had knowledge of the illness which eventually was the immediate cause of his daughter's death. Subsequent to defendant's initial consultation with a medical doctor, a co-worker suggested, on several occasions, that he should seek the advice of a medical doctor but he refused to follow these suggestions. Instead, he told this co-worker that he might lose his daughter but that he was used to tragedy and that this, i.e., the fasting he had imposed upon his daughter, was the only way.

Prior to the time his daughter became ill the defendant had expressed the wish to fast his daughter for 30 days. On one occasion defendant told a co-worker that his mother had told him he was starving his child to death. After her death he expressed the hope that he might have another child because the next time he would prove he was right."[2]

Questions Presented.

Petitioner has attempted to invoke the jurisdiction of this Court upon two distinct grounds. First, he contends that he was deprived of his right to counsel during his conversations with Deputy Sheriff Bender. Second, he contends that his conviction of the crime of involuntary manslaughter finds no support in the evidence and therefore, that his conviction constitutes a denial of due process.

We disagree with both contentions and assert that none of petitioner's rights guaranteed under the United States Constitution were violated by the State of California.

---

[2]Our Statement of Facts has been extracted verbatim from the opinion of the District Court of Appeal, Fourth Appellate District, State of California, which is reprinted in Appendix B of the petition for writ of certiorari. Petitioner nowhere asserts that the foregoing statement contained in the appellate court's opinion is inaccurate and indeed, it is clearly an accurate representation of the significant facts in this case.

ARGUMENT.

Petitioner's Case Does Not Present a Federal Constitutional Issue.

A. Petitioner's Right to Counsel Was Not Violated During the Several Conversations With the Sheriff of San Diego County.

Petitioner asserts that his right to counsel was violated during his four conversations with the Sheriff of San Diego County. (Pet. pp. 6-13.) We disagree. While citing a number of cases in support of this contention, it appears that petitioner places chief reliance upon the holdings set forth in *Escobedo v. Illinois,* 378 U.S. 478 (1964) and *Massiah v. U. S.,* 377 U.S. 201 (1964).

Before turning to the rules of law enunciated in those cases, we shall set forth certain significant details concerning the four conversations petitioner had with Deputy Sheriff Bender. The first conversation took place on April 1, 1963, at the Sheriff's Office. Prior to the conversation, Bender telephoned petitioner telling him that he wanted to talk to him about the death of his daughter. Petitioner agreed to talk with Bender. [Rep. Tr. pp. 356-357, 360.] During the interview, Bender told petitioner that he was not familiar with the situation and background of the case. He said that he had received calls and that it was his job to check "these things out." [Rep. Tr. pp. 365-368.]

Petitioner told Bender that he would type a log from notes he had made during his daughter's illness. A sec-

ond conversation took place on April 3, 1963, at the Sheriff's Office when petitioner voluntarily came there to give the log to Bender. [Rep. Tr. pp. 407-408.]

During the second conversation, Bender told petitioner that he was conducting an investigation. He added that he did not know whether a complaint would be filed since that decision would be up to someone else and would be made after Bender gathered all the information. [Rep. Tr. p. 432.] *Bender asked petitioner if he had been in touch with his attorney. Petitioner said that he had and that his attorney could not see any harm in cooperating.* (Apparently petitioner had read part of the log he had made to his attorney before coming to see Bender.) [Rep. Tr. p. 417.]

On April 25, 1963, Bender telephoned petitioner and talked with him. [Rep. Tr. pp. 441-442.] The fourth and final conversation took place by telephone between Bender and petitioner on May 3, 1963. [Rep. Tr. pp. 442-443.]

We shall now turn to the significant cases in this area of the law. In *Escobedo v. Illinois, supra,* 378 U.S. 478, 490-491, this Court held:

> "We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the

> accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' Gideon v. Wainwright, 372 U.S., at 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial."

It is readily apparent that two of the four factors set forth in *Escobedo* are not present in the instant case. First, petitioner was not in custody at anytime during his four conversations with Bender. The California Supreme Court recently noted that custody is an essential element of the accusatory stage. ". . . The dangers that *Escobedo* and *Dorado* (*People v. Dorado,* 62 Cal. 2d 338, 398 P. 2d 361 (1965)) sought to deter, such as coercion, can only take place if a suspect is in custody." *Ballard v. Superior Court,* 64 A.C. 165, 176, 410 P. 2d 838, 844 (1966). The Delaware Supreme Court has been unable to find a single case in which the *Escobedo* rule has been applied to a pre-arrest confession or admission. *King v. State,* .... Del. ...., 212 A. 2d 722, 725 (1965).

Obviously, petitioner was not in custody during his last two conversations with Bender which took place over the telephone. There is nothing in the record that can possibly suggest that petitioner was not free to leave at anytime during his two in person conversations with Deputy Sheriff Bender. He was, therefore, not in custody during those conversations.

Second, the instant fact situation does not fit the holding in *Escobedo* because Deputy Sheriff Bender was conducting a general inquiry into an unsolved

crime. The purpose of Bender's inquiry was to determine if a crime had been committed, not to accuse petitioner of a crime that the Sheriff had previously concluded had been committed. Indeed, petitioner was not even indicted until October 1, 1963, some six months after the last conversation on May 3, 1963. [Cl. Tr. p. 1.]

Massiah v. U. S., supra, 377 U.S. 201 (1964), is of no assistance to petitioner. There, after the accusatory stage had been reached, an agent of the government tricked the suspect into incriminating himself after he had been indicted. In the instant matter, the accusatory stage had not been reached at the time petitioner talked with Deputy Sheriff Bender. Nor was petitioner unaware that he was talking with the police as was the case in *Massiah.*

Petitioner claims that he did not waive the constitutional rules set forth in *Escobedo* and *Massiah* by informing Deputy Sheriff Bender during their second conversation that he had been in touch with an attorney and that his attorney could not see any harm in cooperating. It is submitted that petitioner's situation because of that statement is significantly different than that of Escobedo who demanded the opportunity to see counsel but was not permitted to do so. Conceivably, had Escobedo been permitted to converse with his attorney he might have refused to say anything to the police.

But here petitioner was not refused the right to talk with his attorney. To the contrary, he exercised that right and voluntarily decided to cooperate with the Sheriff. ". . . It is inconceivable that, having conferred with

his own attorney prior to the interrogation, he was uninformed with respect to his right to remain silent. . . ." *Wade v. Yeager,* 245 F. Supp. 67, 73 (D.N.J. 1965). What more can possibly be required in order to conclude that a person waived his right to counsel and right to remain silent? We would answer that nothing more should be required.

We do not contend that petitioner by consulting with an attorney after his first interview with Bender waived his right to counsel during that interview. However, that interview was clearly during the investigatory stage. The significance of petitioner's consultation with counsel is that whether or not the accusatory stage had been reached at some point after the first interview petitioner clearly waived his right to counsel and right to remain silent as those rights apply to all interviews after the first.

It is note worthy that petitioner did not ask for counsel as was the case in *Escobedo.* Nothing more need be said on that point since the application of the *Escobedo* doctrine to such a fact situation is already before this court in several other cases.

In final analysis, petitioner is asking that the Court extend *Escobedo* so that the police would be required to warn everyone talked with of his right to counsel and right to remain silent. Such was not the intent of the *Escobedo* decision for this Court stated:

> "Nothing we have said today affects the powers of the police to investigate *'an unsolved crime,'* [citation omitted] by gathering information from witnesses and by other 'proper investigative efforts.' [citation omitted] We hold only that when the process shifts from investigatory to accusatory —when its focus is on the accused and its purpose

> is to elicit a confession—our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer." (at p. 492.) (Emphasis added.)

As the California Supreme Court noted in *People v. Dorado, supra,* 62 Cal. 2d 338, 354, 398 P. 2d 361, 371 (1965):

> " 'So long as the methods used comply with due process standards, it is in the public interest for the police to encourage confessions and admissions during interrogations.' "

Clearly, the methods used in this case complied with due process standards.

B. Petitioner Starved His Daughter to Death so That He Could Prove That Fasting Was a Cure for Illness; the Fact Situation in This Case Clearly Demonstrates That Petitioner Committed the Crime of Involuntary Manslaughter.

Petitioner asserts that this case raises ". . . 'fundamental questions as to the rights of citizens and of a parent to minister unto himself and to his children as he believes best.' " (Pet. p. 13.)

That contention is nothing more than a smoke screen to coverup the horrendous crime that he committed upon his defenseless daughter. What the evidence clearly shows is that petitioner starved his daughter to death over a 43 day period so that he could prove that fasting was a cure for illness. The evidence more than justifies the conclusion reached by the District Court of Appeal, Fourth Appellate District, that petitioner while understanding all the risks including that of death knowingly

experimented with his daughter's life. (Pet. App. B, p. 8a.)

On appeal the evidence will not be reweighed and will be viewed in the light most favorable to the prosecution. *Spindler v. U. S.*, 336 F. 2d 678, 682 (9th Cir. 1964), cert. den., *Richards v. U. S.*, 380 U.S. 909 (1965); *People v. Newland*, 15 Cal. 2d 678, 681, 104 P. 2d 778, 779-780 (1940).

Even if it be assumed that petitioner acted in good faith, his conviction of the crime of involuntary manslaughter does not violate due process. Assume arguendo that petitioner held a good faith belief that prayer would cure all the ills of the body; that he secured the services of a religious practitioner who prayed for his daughter's recovery and as a result she died. The authorities are almost unanimous in concluding that such action even if grounded on the First Amendment to the United States Constitution would constitute a crime. In particular see:

Reynolds v. United States, 98 U.S. 145 (1878);

State v. Cox, 138 Me. 151, 23 A. 2d 634 (1941);

People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903);

Owens v. State, 60 Okla. Crim. 110, 116 Pac. 345 (1911);

26 Am. Jur., *Homicide*, § 108, pp. 229-230 (1940);

10 A.L.R. 1137, 1150 (1921);

Ann. Cas. 1913 (B) p. 1221 *et seq.*;

22 C.J.S., *Criminal Law*, § 51, p. 188 (1961).

Petitioner's right to believe in fasting as the means of curing all ills of the body is absolute. His right to

act is not absolute. *Cf., Gospel Army v. City of Los Angeles,* 27 Cal. 2d 232, 242, 163 P. 2d 704, 711 (1945), *appeal dismissed,* 331 U.S. 843 (1947). In that case the court went on to note that society has an interest in protecting the welfare of children—to protect them from abuse. Neither rights of parenthood or religion are beyond limitation. 27 Cal. 2d at p. 244, 163 P. 2d at p. 712.

Conclusion.

We do not believe that any rights guaranteed to petitioner by the United States Constitution were violated by the State of California. The record in this case clearly shows that petitioner's right to counsel was not violated. The record further shows that petitioner by experimenting with his preconceived notion that fasting is the cure for all ills of the body starved his seven year old daughter to her death; that there is sufficient evidence from which the trial court could have concluded that petitioner was guilty of involuntary manslaughter. Therefore, it is respectfully requested that the petition for writ of certiorari be denied.

Respectfully submitted,

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